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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,821	07/25/2007	Michael Voegelé	FIE1 PAU.02	4621
23386 7590 12/29/2010 Myers Andras Sherman LLP 19900 MacArthur Blvd. Suite 1150 Irvine, CA 92612				
EXAMINER NGUYEN, TIN DUC				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
12/20/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/591,821

**Applicant(s)**

VOGELE, MICHAEL

**Examiner**

TIN NGUYEN

**Art Unit**

3731

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

**Please Note:** For examination purposes, the examiner uses English translation version of *Vogele* (WO 97/20515) under 35 U.S.C. 103(a) rejection due to its English translation from German. The English translation version of *Vogele* (WO 97/20515) is also attached.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1 – 3, 6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Vogele* (WO 97/20515) in view of *Charles et al.* (U.S. Patent Pub. 2002/0133174 A1).

As to **claim 1**, *Vogele* discloses an apparatus for controlling corporeal structures, especially for introducing puncture needles or operation probes, comprising a base plate (e.g., at 1), at least one base holder (e.g., at 2) applied to the base plate, and holding rods (e.g., at 3, 4) attached thereto in an articulated manner configured for holding and positioning a targeting device (e.g., at 10) for a medical instrument (e.g., at 8) on the free ends of the holding rods in the X- and/or Y- plane (WO '515: Figs. 1 – 3; Abstract; capable of). *Vogele* does not disclose that the target device is mounted on two adjustment arms which are each independently movable by means of an actuating drive.

However, *Charles et al.* teach a surgical manipulator, in which the target device (e.g., at 114) is mounted on two adjustment arms (e.g., at 116 and 118) which are each independently movable by means of an actuating drive (e.g., at 120 and 122; at 124 and 126) in the X- and/or Y- plane (Figs. 4 – 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to configure on the free ends of the holding rods of *Vogele* comprising the target device being mounted on two adjustment arms which are each independently movable by means of an actuating drive in view of *Charles et al.* in order to provide a surgical manipulator that can enhance the dexterity and precision of an operator.

As to **claim 2**, dependent on claim 1, *modified Vogele* discloses that the adjustment arms are bent towards the patient (*Charles et al.*: Figs. 4 – 8; capable of).

As to **claim 3**, dependent on claim 1, *modified Vogele* discloses that a guide tube (e.g., 114) for the medical instrument is mounted on the free ends of the adjustment arms, especially by way of ball heads (*Charles et al.*: Figs. 4 – 8).

As to **claim 6**, dependent on claim 1, *modified Vogele* discloses that the two actuating drives (e.g., at 124 and 126) are arranged directly above one another and are preferably arranged as flat boxes, and each actuating drive controls movement of an associated adjustment arm (*Charles et al.*: Figs. 4 – 8; [0023]: lines 15 - 18).

As to **claim 7**, dependent on claim 1, *modified Vogele* discloses that the actuating drives each comprise a compound slide for independently adjusting the respective adjustment arm in the X-Y plane, especially with remote-controllable threaded spindles (*Charles et al.*: Figs. 4 – 8; [0028]: lines 7 – 8; 15 – 18).

3. **Claims 4 - 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Vogele* (WO 97/20515) in view of *Charles et al.* (U.S. Patent Pub. 2002/0133174 A1) and further in view of *Hosko, Jr.* (U.S. Patent No. 2,982,248).

As to **claim 4**, dependent on claim 1, *Vogele* in view of *Charles et al.* disclose the base plate (e.g., at 1) (*Vogele*: Fig. 1). *Vogele* in view of *Charles et al.* do not disclose a scaffold- or portal-like frame, and the scaffold- or portal-like frame is configured for surrounding a patient.

However, *Hosko, Jr.* teaches the base plate (e.g., at 5) comprising a scaffold- or portal-like frame (e.g., at 16 and 32; at 15 and 22), and the scaffold- or portal-like frame is configured for surrounding a patient (Figs. 1 – 7; capable of). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to configure the base plate of *Vogele* in view of *Charles et al.* comprising a scaffold- or portal-like frame, and the scaffold- or portal-like frame is configured for surrounding a patient further in view of *Hosko, Jr.* in order to be used in experimentation on patient and to be adjusted for different kinds and degrees of restrain and for patients of different sizes.

As to **claim 5**, dependent on claim 4, *modified Vogele* discloses that the base plate comprises marking (e.g., at 14) for repositioning the frame which can be fastened to the base plate in a magnetic, pneumatic or mechanical manner (*Vogele*: Fig. 1; Abstract and *Hosko, Jr.*: Figs. 1 – 7; capable of).

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims **1 – 7** have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TIN NGUYEN** whose telephone number is (571)270-7407. The examiner can normally be reached on M-F /8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./  
Examiner, Art Unit 3731

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773